

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
EDWARD AND CHRISTINE KENNA)

For Appellants: Edward Kenna,
in pro. per.

For Respondent: John A. Stilwell, Jr.
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Edward and Christine Kenna against a proposed assessment of additional personal income tax in the amount of \$303.39 for the year 1976.

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The issue presented is whether the expenses of a cross-country trip taken by appellants are deductible educational expenses.

Appellants are both school teachers. Mr. Kenna teaches physical education; Mrs. Kenna teaches **all** subjects, including physical education, to children **with** learning disabilities. During the summer of 1976, appellants traveled by automobile to Montreal, Canada, where they attended the Olympics and took a course entitled "History of the Olympics." The course was **offered** by the Physical Education Department of the University of California at Hayward, and each appellant earned three credits for taking the course. Appellants spent one week driving to and from Montreal, stopping at various points of interest en route. They stayed in Montreal the length of the Olympics, two weeks.

On their 1976 joint California **tax return**, appellants claimed the entire cost of their trip as a business expense deduction. Upon audit, respondent determined that the expenses of the trip were personal and therefore not deductible. It issued a proposed assessment reflecting this determination. Following appellants' protest, respondent modified the proposed assessment to allow a deduction of \$150, the cost of the course, but it affirmed the proposed assessment in all other respects. This timely appeal followed.

Revenue and Taxation Code section 17202 allows an individual to deduct all "ordinary and necessary" business expenses. (Rev. & Tax. Code, § 17202, subd. (a).) During the years at issue, educational expenses were deductible as business expenses if the education was undertaken primarily either to maintain or improve skills needed by the taxpayer in his employment or business, or to meet the employer's requirements, applicable law, or regulations imposed as a condition for the taxpayer's retention of his employment, status, or salary. (Former Cal. Admin. Code, tit. 18, reg. 17202(e) (Repealer filed Feb. 21, 1979, Register 79, No. 7).) Education expenses were not deductible if the education was **undertaken** primarily for the purpose of fulfilling the **general** educational aspirations or other personal purposes of the taxpayer. (Former Cal. Admin. Code, tit. 18, reg. 17202(e)(2).) In general, a taxpayer's expenditures for travel as a form of education was considered as primarily personal in nature and therefore not deductible, (Former Cal. Admin. Code, tit. 18, reg. 17202(e)(3).)

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The burden of proving that the educational expenses are deductible is on the taxpayer'. (Appeal of Bernice V. Grosso, Cal. St. Bd. of Equal., Aug. 1, 1980.) In **order** to prove that they took their cross-country trip to maintain or improve skills required in their employment, and therefore that the expenses of that trip are deductible, appellants

'must show that the major portion of [their] time while traveling was **spent not** on ordinary tourism, but on activities which were so uniquely tailored to strengthen [their] teaching abilities that the expenditures **therefor** are excepted from the general rule that educational travel is to be considered primarily personal in nature and therefore nondeductible.

(Appeal of Bernice V. Grosso, supra.)

Appellants have failed to meet this burden. Other than the time spent taking the course, their trip was indistinguishable from a normal tourist's cross-country travel. Appellants stopped en route to Montreal at several national parks, Niagara Falls, and several sites of historical importance such as Independence Hall in Philadelphia and Concord and Lexington, Massachusetts. While in Montreal, only twelve hours were spent attending the course, with the rest of the time spent attending Olympic events. Appellants state that material and information gathered during their trip has been used in their classrooms and contend that this causes the travel to be deductible education. While we have no doubt that appellants' trip was helpful to them in their profession, this fact alone does not cause the expenses in question to be deductible as ordinary and necessary business expenses. (Appeal of John H. Roy, Cal. St. Bd. of Equal., March 8, 1976; Appeal of Robert C. and Joan E. Looney, Cal. St. Bd. of Equal., Aug. 30, 1967.) Appellants assert that at a minimum they should be allowed to deduct the cost of admission to the Olympic events since they were required to attend at least twenty hours of events in order to earn credit for the course. We cannot agree. The fact that attendance was required in order to earn academic credit does not cause the expenses of attendance to be deductible. (See Appeal of Bernice V. Grosso, supra.) To prove that these expenses are deductible appellants have to meet the "primary purpose" text. We cannot find that either appellants' trip to **Montreal** or attendance at the Olympic events was undertaken primarily to maintain or improve their teaching skills, rather than for personal enjoyment. Therefore, deduction of these expenses was properly denied.

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Appellants contend that they must be allowed to deduct the expenses of traveling to and from **Montreal** because respondent conceded that the cost of the course they took in Montreal is deductible. In essence,, appellants' argument is that if one travels to obtain education which is deductible, the cost of the travel must also be deductible. We cannot agree. Respondent's regulations in effect for the year at-issue, provided that **expenditures** for travel were deductible only if the travel was undertaken **primarily** to obtain education, the expenses of which were **deductible**. (Former Cal. Admin. Code, tit. 18, reg 17202(e)(4).) The regulations further state that an important factor in determining the primary purpose of travel is the relative amount of time spent on personal activity compared with the time spent on educational pursuits. As mentioned above, appellants spent merely twelve hours of their month vacation obtaining deductible education. On this basis, we find that the primary purpose of their trip was to take a vacation rather than to obtain deductible education. Therefore, although the course they took was a deductible business expense, the expenses of traveling to and from Montreal were not deductible.

For the above reasons, we must sustain respondent's action.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 1.8595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Edward and Christine Kenna against a proposed assessment of additional personal income tax in the amount of \$303.39 for the year 1976, be and the same is hereby sustained.

Done at Sacramento, California, this **13th** day
of December , 1983, by the State Board of Equalization,
with Board Members Mr. Bennett, Mr. Collis, Mr. Dronenburg
and Mr. Nevins present.

William M. Bennett, Chairman

Conway H. Collis , Member

Ernest J. Dronenburg, Jr. , Member

Richard Nevins, Member

_____, Member